

p34

G. R. S. 58]

Previous references.

1887  
191.

File No. 2 of 1887

Serial Nos. 1-6

(municipal)

Later references.

1887

## GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-6

Major Part B for August 88.

### SUBJECT.

Appeal of Mr. B. Yerishma Deyger about a  
the closing by the municipality of certain lanes  
leading to the well in his back-yard at Tumbkur.

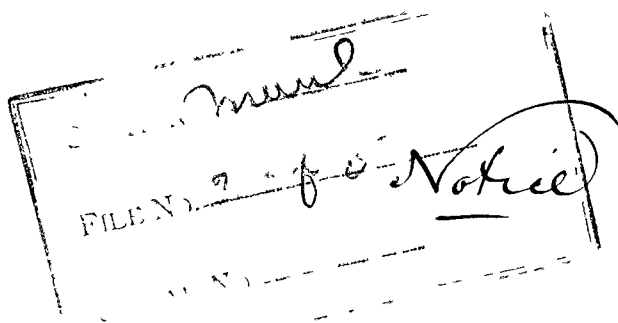
Sl. 1 To the Dy Commissioner, Tumbkur.

No. 780 dated 27-1-88

Forwards petition no. 3171 of 23-1-88  
received from B. Yerishma Deyger, 1st grade  
pleader, Tumbkur, for a brief report and del  
mission proceedings

From Mr. B. Yerishma Deyger, Tumbkur  
Petition dated 21-7-11 5. 3-88.

peals against the



1  
2+

Under instructions from the Chief Secretary, Krishnalingar Meader, is informed that his appeal about lanes and well, will be heard by the Dewan on Friday the 10<sup>th</sup> Instt at Bangalore.

Sunkin  
8<sup>th</sup> Augt / 88 }

M. S. M. S.  
Dy. Commis. Sione  
Sunkin Sitt

at half past 5 P.M. 8. 8. 88.

Received Shan Nung  
Duplicate copy - to L

Post copy of Service Message ~~229~~

Ordinary

To

Mumbar

P. A. Krishna Murthy Esq.  
Deputy Commissioner

From

Bangalore

Chief Secretary.

"Give notice to Pleader Krishnalingar  
his appeal about lanes and well will be  
heard by Dewau on Friday, 10<sup>th</sup> instant"  
A. A. Copy forwarded by post. By Order

Bangalore,  
Office of the Dewau of Mysore.  
8<sup>th</sup> August 1888

M. M.  
For Chief Secretary.

Post copy of Service Message.

To  
Sunkut,  
P. A. Krishna Murthy Esq.,  
Deputy Commissioner.

Ordinary

From  
Bangalore,  
Chief Secretary.

"Give notice to Pleader Krishnengar  
his appeal about lanes and well will be  
heard by Dewan on Friday, 10<sup>th</sup> instant"

N: A Copy forwarded by post.

Bangalore.  
Office of the Dewan of Mysore  
8<sup>th</sup> August 1888

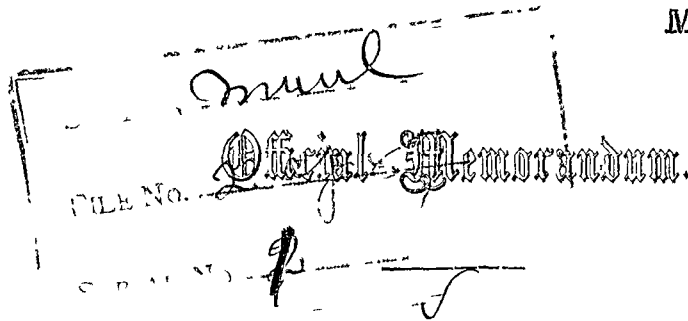
By Order  
Mr. Narain Rao  
for Chief Secretary

From the same no 538 of 15-3-88.

No. 780

Mysore Dewan's Office,

PETITION DEPARTMENT



The accompanying Petition No. 3171, dated 23rd January <sup>1888</sup> received at

the Dewan's Office from B. Krishna Chyengar, 1st Grade.  
Phader, Lunkur

is forwarded, together with its Eight enclosures, to the Deputy  
Commissioner, Lunkur district, for a brief  
report and submission of Proceedings.

BANGALORE,

draft

By Order,

27 January 1888.

WM  
For Under Secretary.

Mysore Government Press Bangalore—7-1-88.—1,000.

FILE NO.

FILE NO. 2 By order of His Highness the Maharajah  
of Mysore

Howard S.,

I humbly beg your honor's permission to respectfully remind your honor of my appeal petition dated 23<sup>rd</sup> January 1888, against the order passed by the District Magistrate and President of the Municipal Corporation regarding my well in my backyard and the want of my walls. As I am put to great inconvenience by not being able to complete the building and secure safety to my premises by enclosing the wall, I have been compelled to repeat my prayer for an early disposal of my appeal.

They remain  
Honored Sir,

Your most obedient & humble son &c

5th March 1888

B. Krishna Rao  
1<sup>st</sup> Grade pleader  
Mun. C.

From

Simkuri District

7

unregistered Enrol

FILE No. 2 of 87

Serial No 3

The Secretary to the Dewan  
of Mysore.

2 3-

M. L. G.  
for perusal.  
18/3

R. J. 1-1-

Dated 15 } March 1888

Despatched 17

Received

Enclosures No Records

General No. 538 } 1887-88.

Chief Secretary's No 7809  
January 1888.

Reports on the peti-  
-tion of Krishnanjar, 1st  
grade pleader, Simkuri

subd.  
25/3

No 538

Tumkur District  
Deputy Commissioner's Office  
Camp Mayasandra 15<sup>th</sup> March  
1888.

To,

The Chief Secretary to the  
Dewan of Mysore,  
Sir, Bangalore.

I have the honor to acknowledge the receipt of your No. 780 of 27<sup>th</sup> January, last and in reply to submit the accompanying papers in re appeal preferred by Krishnaiengar against the decision of the Municipal Board of the Tumkur Town, to the effect that the lane leading to a well behind his house should be kept open and that there should be no obstruction to the use of this well by the public. —

2. — Petitioner Krishnaiengar who owned a small house in the locality bought up several others and built a large house, to  
which

ich he proposed to add a  
of and a gate  
way. — This led to complaints  
from all the residents in the  
neighbourhood which comprised  
three items viz: —

1. That a lane leading to a few  
houses was shut up.
  2. That another lane leading  
to a public well was walled  
up and thus closed as a  
public thoroughfare. —
  3. That the well was being enclosed  
on all sides and that the  
people were therefore prevented  
from the use of that well.
3. — On enquiry and after personal  
inspection both by myself and Mr.  
Panchanatha Row in immediate  
charge of the Municipal affairs  
of the Town, it was found that all  
the complaints were well founded.  
In the matter of the first lane it  
was decided that a fair valuation  
= ~~town~~

=tion should be set upon the lane  
and the amount levied from ~~cas~~  
Krishna Iyengar as he had substi-  
tuted another lane for the one  
encroached upon by him and he  
had also built a substantial  
house on it, the removal of which  
would have been a great hardship  
to him. — With regard to the 2<sup>nd</sup> lane  
it was directed that it should be  
kept open; and the well was declared  
to be a public well and Krishna  
Iyengar was directed to remove all  
the obstructions which he had placed  
for people approaching it. —

4. — Krishna Iyengar tried to raise  
a wall in spite of the notices ~~cas~~  
issued to him but it has been  
removed. — The subject was  
subsequently placed before the  
Municipal Board and all the  
assembled members passed a ~~cas~~  
unanimous resolution in the  
following

San B

A

following words:—

Read the records regarding the alleged encroachment by Pleader Krishnasingar of lanes and a public well.

Resolved that the use of the well should be available to the people in the neighbourhood, that there should not be the slightest restriction to the use of this right by the people, and that to ensure this object there should be no gate-way built and closed, that a clear agreement to this effect be taken from Pleader Krishnasingar, that the decision of the President with regard to the lane B may be approved, and that the lane at A. be kept open."

5.— It is thus apparent that as Krishnasingar has been rightly prevented from doing acts which he had clearly no right to do — But as his petition contains some mis-statements, I think it necessary that I should correct them.

(a) It is said that I acted upon some private information given to me by Mr. Panchanath Rao. This is false. Nearly all the inhabitants of Chitragar Street prayed for my interference by means of express petitions.

(b) It is a falsehood that Mr. Krishna Rao ever asked me to stay the execution of the order till he had appealed to the Dewan. On the other hand when he had come to me before my order to the Amildar to remove the wall had been carried out, I explained to him that he, intelligent as he was, should <sup>not</sup> have built the wall contrary to the written order issued to him till the whole matter was finally settled, and he agreed to remove the wall and went away. A note recorded by the Amildar of C. 4, I insert on one of the petitions presented.

Presented to him shows that when the petitioner begged for the stay of execution urging for a ground that he would appeal to the Dewan, three-fourths of the wall - had been demolished. —

(c) No application for Copies has been made except the one made to the Amildar and which has been filed with the records of the case.

6. — With regard to the merits of the case, I beg to submit that the Municipality has not proceeded upon a very weak case. — In the first place there is the evidence of all the inhabitants of a street who have complained in the matter that the well was used by all of them. Secondly there is the recorded testimony of Guanaputram, the late Jailor, and Kutyalnaidu, a nephew of Ragunath Mestree, aged 67 years, that the well was built under the orders of General Dobbs for the use of

of

of the public with the fort stones and by the jail convicts. - 3<sup>rdly</sup> ~~there~~ is the form and structure of the well which affords strong circumstantial evidence that it could not have been a private well. - 4<sup>thly</sup> and lastly there is the statement of the petitioner himself in his petition dated 30<sup>th</sup> June 1886 that people coming to the well commit nuisance round about it and that the Municipal scavengers do not sweep the locality. Krishna Lengar perhaps made this statement when he had no idea of usurping this right, but forgetting his own statement he now contends that the well was sold to him and that it was in his exclusive enjoyment. There is always the presumption of justice before generosity and it is difficult to conceive that Krishna Lengar's enjoyment of the well was so exclusive as he attempts to make it out when he was so helpless as

to prevent even such as were com-  
-mitting a nuisance from coming  
to the well. — Likewise the lane at  
A was the outlet for all the water  
of Gernuherree and the petitioner  
therefore wanted the Municipality  
to build a drain. — He has also  
similarly forgotten that before he  
built upon the other lane he showed  
it to Mr. Amaze Row, Assistant  
Commissioner then in Charge of  
Municipal affairs, and all the other  
Municipal Commissioners whom he  
has named in his petition viz. as  
Gardaraj Iyengar, Ramadasappa,  
J. Katakhar and Srinivasingar.  
The above will show that the case  
of the Municipality is by no means  
weak, while the petitioner cannot  
derive a greater right than his  
vendors possessed in the well which  
is nil according to the testimony  
of Kutyal Hardu and Ganaputram.

That

That there are no official records bearing upon it does not detract a jot from the strength of the case, as all such records have been from time to time destroyed. - I may also add that during the discussion of the subject at the meeting of the Board I suggested that a <sup>sub -</sup> ~~municipal~~ committee might be appointed to take further evidence if needed and decide the point, when Venkatacheliiah, Shams hooden Sahb, Sugappa and Appannachetty got up in a body and said that such a course was unnecessary as from their own personal observation they knew that the well was being used by all the people in the neighbourhood. -

7. - With regard to the suggestion made by the Petitioner that the municipality should file a suit to prevent such encroachments, I beg respectfully to submit that the course if ordered to be adopted will be highly

highly inconvenient. The theory of all legislation in India is that it declares an existing unwritten law as otherwise all acts which are not supported by written law will have to become illegal. — As a matter of immemorial custom Government officers have always exercised the power of removing encroachments in villages and towns, and where municipalities have been established without any regulation for their constitution and working, it must be assumed that all the powers which were exercised by Government officers have been delegated to such bodies. The very fact that the Petitioner has appealed to Government shows that he recognises such a power but he would find himself at sea if asked to produce the Chapter and verse of any authority for the government to exercise such a power. Apart from these theoretical objections

I beg respectfully to submit ~~that~~ if such power is desired to a municipality or (which may amount to the same thing) a Revenue Officer the result will be very inconvenient. The Dy. Commissioner will be under the undignified plight of taking a suit for every small encroachment. — Such instances of encroachment are multiplying and a definite ruling by the government is very necessary. When the new Revenue Code comes into operation there is this power reserved to the Revenue authorities, but till then the Customary law must have force. —

8. — It remains for me only to state that the Petitioner endeavoured to build a gate-way during night-time contrary to the resolution of the Board and when the Municipal Officials resisted it he has filed a Criminal Complaint of trespass ~~etc~~ against them which is pending before

the Police Assistant Commissioner  
If required the records of that case  
will be sent for and submitted for the  
perusal of the Dewan and the Com-  
plaint petition shows on what  
baseless and frivolous grounds the  
municipal servants have been dragged  
before a criminal court. But as  
the case is yet pending I desist  
from making further remarks, and  
mention the circumstance to show  
that there are strong reasons to put  
our municipalities and their servants  
in a more workable state, and till  
this is done by a proper Regulation  
to give them the benefit of all  
the powers which they possess under  
the Customary law. —

I have the honor to be,

Sir,

Your most obedient servant



Deputy Commissioner  
Jumhur District.

h.l.h.

(General Serial No. 32)

OFFICE

1888

From

Deputy Commissioner  
Srinagar District.

To

The Chief Secretary to the Dewan  
of Mysore.

SECTION

FILE No.

Dated

Despatched

Received

Enclosures No. 3

General No.  
No.

1888, 89

24

Continuation of  
this Office letter No 538 of  
15<sup>th</sup> ultimo reporting on the  
petition of pleader  
Krishnengar of Srinagar,  
has the honor to forward  
herewith copy of order  
passed by the Police  
Assistant Commissioner  
and 1<sup>st</sup> Class Magistrate  
on the complaint filed  
by the said Krishnengar  
against the Municipal  
servants and others ac-  
cusing them of mis-  
chief, restraint &

W.D. Minto

Deputy Commissioner

Sd/-

1888

X Limited to

20th of 700000

3rd 2

7th

Subordinate in writing of former  
letter.

Complaint was to the Dewan  
& District report already sub-  
mitted the complaint to be  
frivolous.

2/4 Rly.

X Case No 2 of 1888.

9/11/88

(General Serial No. 31.)

1888 3480

From

Deputy Commissioner  
Tumkur District.

To

The Chief Secretary to the Dewan  
of Mysore.

Dated

24 August 1888.

Despatched

Received

Enclosures No.

General No.  
No.

247 1888-89

Deputy Commr's No 5389  
15 March 1888.

Forwards for orders  
a report from the Muni-  
-cipal Overseer bringing  
to notice that Krishna  
Sanyal is doing acts in-  
-consistent with the Re-  
-solution passed by the  
Municipal Board.

Index for  
very brief order  
6/8/88

No 247

Timtur District.  
Deputy Commissioner's office.  
Timtur 4<sup>th</sup> August  
1888.

2

15.

The Chief Secretary to the  
Dewan of Mysore.

Sir,

In continuation of this  
Office No 538 dated 15<sup>th</sup> March  
1888 I have the honor to for-  
ward herewith the accompany-  
ing report from the Municipal  
Overseer bringing to notice that  
Krishna Iyengar is doing acts  
inconsistent with the Resolu-  
tion passed by the Municipal  
Board. A motion is pending  
in the Chief Court in connection  
with the complaint of trespass  
lodged by Krishna Iyengar  
against the Municipal ser-  
vants who resisted him in  
building

which was dismissed by the Police Assistant Commissioner and 1<sup>st</sup> Class Magistrate - Mr Krishna Sanyal would have done well if he had remained quiet till the matter was disposed of by the Dewan but as he has interfered with the declared rights of the Municipality in open defiance of the resolution already referred to, I solicit that very early orders may be passed -

2 - I would only add that it will be very inconvenient if contrary to the long established practice, Municipal Authorities who in such respects and in the absence of express Regulations represent only the Government, are declared ~~as~~ incompetent

Saint Duff

23<sup>d</sup> January 1888

5<sup>th</sup> February

5<sup>th</sup> March

24<sup>th</sup> April

12<sup>th</sup> June

|         |       |
|---------|-------|
| FILE NO | 20887 |
| CLERK   | 6     |

21 23

Read:—

Petitions dated as per margin from B Kristhniengar, 1<sup>st</sup> grade Pleader, Immbut claiming ownership of a certain well by alleged right of purchase, and complaining of the Deputy Commissioner's interference with certain erections on his own property on the ground that they closed to the public, certain lanes leading up to the said well and further denying that the Deputy Commissioner had jurisdiction to act in the matter as he has done.

Also letter No 538 dated 15<sup>th</sup> March 1888 from the Deputy Commissioner of the Immbut District reporting on the above petition.

Order No 24 dated 13<sup>th</sup> April 1888, from the same officer, forwarding copies of certain judicial orders

passed

24<sup>23</sup>

passed in connection with  
the case,

and letter No. 247 dated  
4<sup>th</sup> August 1888, from the  
same officer, bringing to  
notice that the petitioner  
was doing acts inconsistent  
with the Resolution passed  
by the Municipal Board.

(Order thereon: —

No.  $\frac{3893}{60}$  of 13 - August /88

The following decision  
of the Government is com-  
municated to the Deputy  
Commissioner of Lumbini  
for information and guidance.

"In the matter of the  
appeal presented by B.  
Kishorengat, 1<sup>st</sup> grade  
Pleader, Lumbini, against  
the Deputy Commissioner's  
order dated 12<sup>th</sup> November  
1887 and subsequent Proceedings.

### Decision

(After careful consideration  
of the evidence on record and

"after hearing the arguments ~~of~~ of the Appellant, the Court have no hesitation in coming to the conclusion that the well in question is public property, to the use of which the public are entitled as of right. It was built by convict labor and with Government materials about the year 1855 and has always been dedicated to the use of the public. The public have had uninterrupted access to it ever since.

The appellants' argument that the well contains water only for a few months in the year and that therefore it is not possible for any one to have uninterrupted use of it is wholly untenable. In such a case, uninterrupted use would mean use without interruption whenever  
 and

and so long as the property by its nature is capable of being used.

2. Land B marked in the sketch on record are proved to be public lanes and through the passage marked C as well as through A & B, the public used to have access to the well, the lanes A and B being moreover used for the drainage of the neighbouring streets. The Appellant has unauthorizedly built upon the lane B, diverting the drainage by another channel. The local authorities consider the diversion though unauthorized, sufficient to ensure efficient drainage and are prepared to condone the offence by receiving from the Appellant adequate compensation. The Government will not object

25  
27

to this arrangement but  
~~only~~ <sup>to</sup> ~~involved to observe that~~  
the compensation fixed  
~~may~~ <sup>shall</sup> be nominal as it  
is required merely to ~~reimburse~~  
the public right which has  
been invaded.) The passage  
marked C should not  
be closed by a gate till  
other means of access  
to the well is provided  
by petitioner at his own  
expense or till petitioner  
buys up the well as he  
now offers to do

5- The appellants' attempt  
to build the gate at C in  
disobedience of orders  
was ~~most~~ unjustifiable  
and the Deputy Commissioner's  
action in removing the  
construction was just  
and within his legitimate  
authority.

6 The public lane A  
should also be not in-  
terfered with in any way

26  
27

7. The appellants' contention that the burden of proving the right of the public to the well and to A, B and C is upon the Government is wholly untenable. The public have always been in open and undisputed possession and the burden of proof is on the appellant, who of course, is at liberty to seek redress against the action of the Deputy Commissioner and his subordinate officers by a suit in the Civil Courts.

8. The appellant impugns the authority of the Deputy Commissioner and his subordinate officers to take any action in the matter on the ground that the Municipality of Lumbini is not constituted by law, and <sup>that</sup> no law exists defining the powers and duties of the Lumbini Municipal Board. But it

27  
it may be sufficient  
in this place to point  
out that under Revenue  
Law and Custom as in  
force in this Province,  
the Revenue Officers  
of Government have  
full jurisdiction  
summarily to eject  
all persons found  
encroaching upon Govt  
land and to take possession  
of the land encroached  
upon. In Municipalities  
not constituted under the  
provisions of any existing  
law, the Municipal  
Boards are formed under  
an executive order of the  
Government, for the  
purpose of merely aiding  
the Officers of Government  
in the maintenance of due  
sanitation, but they have  
no legal status and have  
no property vested in them.  
Land within such Munic.  
-palities

Municipalities, in which  
no private right of property  
exists, vests in Government  
and all public lanes, streets,  
public wells, tanks  
water courses &c within  
such limits also vest  
in Government, subject  
to certain rights of use  
by the public. Till a  
Municipal law is passed  
vesting Municipal Boards  
with such rights of property,  
these continue to be vested  
in Government. When  
Government property  
within such Municipalities  
is in any way unauthorisedly  
encroached upon or inter-  
fered with to the detri-  
ment of the right of the  
Government or of the  
public, the officers of  
Government have the  
fullest right, summarily  
to remove such encroach-  
ment and obstruction  
at

29 36

at the risk and cost  
of the party responsible  
therefor, who besides  
makes himself liable  
to a criminal prosecution,  
~~that is any way~~ <sup>if he</sup> obstructing  
a public servant in the  
discharge of such public  
duty. The law applicable  
to such encroachments  
is what applies to en-  
-croachments upon  
Government land usually  
dealt with by the Revenue  
Officers of Government.

So much in regard to  
the right of the Govern-  
ment to remove en-  
croachments and ob-  
structions within  
municipal limits.

9. The Appellant has  
represented to me that  
the well in question is  
of little or no value to  
the public as it contains  
no permanent supply of  
water

30  
297  
water and as better wells  
exist close by, it is very  
seldom resorted to by the  
public. If this is really  
the case and if appellant  
will pay a fair price for  
the well, then in that case  
with the money so paid,  
another well ~~could~~<sup>can</sup> be  
constructed, and when  
such new well has  
been constructed and  
opened for public use,  
then the one now in  
dispute, can be handed  
over to him as his  
private property free  
from any right of the  
Government or of the  
public to its use. He  
has already spent much  
in the improvement of  
his house and such  
a concession would  
enable him further  
to improve it. This

31/5/28

question is accordingly referred to the Deputy Commissioner for needful action and investigation with the advice of the Sanikhet Municipal Board.

Signed/ A Theohadri Syer  
Deewan

(2.) The Deputy Commissioner is requested to report in due course the action taken under the last para of the above decision.

by  
13/8/28

for Chief Secretary

To The Dy. Commr.

Thun Kun Distt  
with Vernaculari progs  
as per Fekrich -

34 3-

100

From New Orleans No 312 8 21  
From New Orleans No 312 8 21  
From New Orleans No 312 8 21

1888

The Deputy Comm  
Junkin

Recd 13<sup>th</sup> August/88  
15<sup>th</sup> —

No 3593 ✓ E V P  
Per 60